Calendar No. 655

98TH CONGRESS
2d Session

SENATE

REPORT
98–355

ILLINOIS AND MICHIGAN CANAL NATIONAL HERITAGE ACT OF 1983

FEBRUARY 21 (legislative day, FEBRUARY 20), 1984.—Ordered to be printed

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 746]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 746) to establish the Illinois and Michigan Canal National Heritage Corridor in the State of Illinois, and for other purposes, having considered the same, reports favorably thereon with amendments to the text and recommends that the bill as amended do pass.

The amendments are as follows:

1. On page 3, line 1, strike out "a policy of".
2. On page 3, line 2, strike out all beginning with "The" through "cooperation." on line 3.
3. On page 4, line 7, after the comma, insert the following: "park districts,".
4. On page 4, line 17, after the second comma, insert the following: "and updated May 1983,".
5. On page 4, line 23, strike out "shall" and insert "may".
6. On page 5, strike out lines 14 through 21, and insert in lieu thereof the following:

> (2) Three individuals, nominated by the Governor and appointed by the Secretary, who will represent the interests of State and local government.

7. On page 5, line 22, strike out "(5)" and insert in lieu thereof "(3)".
8. On page 6, line 6, strike out "(6)" and insert in lieu thereof "(4)".
9. On page 6, line 7, strike out "or adjacent to".
10. On page 6, line 12, strike out "(7)" and insert in lieu thereof "(5)".

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11. On page 6, line 16, strike out "(8)" and insert in lieu thereof "(6)".

12. On page 6, line 19, before "Members", insert the following: "The Secretary may request that additional names be submitted for members appointed pursuant to paragraphs (2) through (6).".

13. On page 6, line 19, strike out "paragraphs (7) and (8)" and insert "paragraphs (5) and (6)".

14. On page 6, strike out line 23 through line 15 on page 7 and insert in lieu thereof the following:

> (b) TERMS.—(1) Except as provided in paragraphs (2) and (3), members of the Commission shall be appointed for terms of three years.
>
> (2) Of the members of the Commission first appointed under paragraphs (2), (3), (4), (5), and (6) of subsection (a)—
>
> (i) six shall be appointed for terms of one year;
>
> (ii) six shall be appointed for terms of two years; and
>
> (iii) six shall be appointed for terms of three years,
>
> as designated by the Governor at the time of nomination.
>
> (3) Any member of the Commission appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member of the Commission may serve after the expiration of his term until his successor has taken office.

15. On page 8, line 3, strike out "paragraphs (7) and (8)" and insert "paragraphs (5) and (6)".

16. On page 11, strike out lines 8 through 12 and insert in lieu thereof the following:

> (e) USE OF APPROPRIATED AMOUNTS TO OBTAIN FEDERAL FUNDING.—Notwithstanding any other provision of law, for purposes of any law conditioning the receipt of Federal funding on a nonfederal contribution, any portion of the amounts appropriated pursuant to section 16 of this Act may, at the election of the Commission, be used as such nonfederal contribution.

17. On page 11, line 22, insert "of this subsection" after "paragraph (2)".

18. On page 11, line 23, insert "of this section" after "subsection (c)".

19. On page 12, line 1, insert "of this subsection" after "paragraph (3)".

20. On page 12, line 13, after the comma, insert the following: "with the consent of such agency,".

21. On page 14, line 6, after the word "in" insert the word "the".

22. On page 14, strike lines 8 through 11 and insert in lieu thereof "the canal.".

23. On page 14, strike line 25 through line 3 on page 15 and insert in lieu thereof "the corridor.".

24. On page 15, lines 21 and 22 strike out "providing funds, and support in raising funds, to enable" and insert in lieu thereof "cooperating with".

25. On page 15, line 23, strike out "to acquire," and insert in lieu thereof "in acquiring,".

26. On page 16, lines 16 and 17 strike out "providing funds, or support in raising funds, to enable" and insert in lieu thereof "cooperating with".

27. On page 16, line 18 strike out "to acquire," and insert in lieu thereof "in acquiring,".

28. On page 16, line 23, strike out beginning with the word "potential—" through line 2 on page 17 and insert in lieu thereof "potential. Such assistance may include providing technical staff assistance for historic preservation and revitalization efforts.".

29. On page 18, line 4, strike out "trail" and insert in lieu thereof "trial".

30. On page 18, line 14, strike out "private".

31. On page 18, line 19, strike out "may" and insert in lieu thereof "shall".

32. On page 21, line 22, after "sites" insert "or transportation corridors".

33. On page 23, line 1, strike out "1984," and insert in lieu thereof "1985,".

34. On page 23, line 10, strike out "1985," and insert in lieu thereof "1986,".

35. On page 24, strike out lines 8 through 22.

36. On page 24, line 23, strike out "(5)" and insert in lieu thereof "(3)".

37. On Page 25, line 4, after "supporting" insert "significant".

38. On page 25, line 10, strike out "extend" and insert in lieu thereof "extent".

39. On page 25, strike out all beginning with line 16 through line 6 on page 26 and insert in lieu thereof the following:

CONVEYANCE OF CANAL TITLE BY UNITED STATES

SEC. 14. (a) Except as provided in subsection (b), the Secretary shall, on behalf of the United States, convey to the State by quitclaim deed any right, title, or interest of the United States to the real property described in the Act entitled "An Act relinquishing to the State of Illinois certain right, title, or interest of the United States of America, and for other purposes", approved July 1, 1947 (61 Stat. 237), comprising approximately 2,600 acres: *Provided*, That such real property is used and occupied for highway, park, recreational, or other public purposes, including those provided for under this Act: *Provided further*, That the State may continue to lease any such real property currently leased to any person so long as the revenue from such lease is used by the State for park or recreational purposes within the corridor: *Provided further*, That if any of such real property is not so used and occupied, then any right, title, or interest in the real property not so used and occupied which was conveyed under this subsection shall revest in the United States: *Provided further*, That the conveyance by the United States shall be subject to the condition that the State of Illinois, its succes-

sors, and assigns agree to hold the United States harmless from claims arising from or through the operations of the lands conveyed by the United States due to conditions existing at the time of this conveyance.

(b) The interests in the canal prism and towpath lands (including reserved lands) in Township 37 North, Range 11 East, Section 14; Township 35 North, Range 10 East, Sections 9 and 16; Township 35 North, Range 10 East, Sections 16, 20, and 21; Township 34 North, Range 9 East, Section 31; and Township 34 North, Range 8 East, Sections 22, 23, 25, 26, and 36, necessary for the operation and maintenance of the Illinois Waterway Navigation Project will be conveyed only with the concurrence of the Secretary of the Army with such conditions as necessary to protect the Navigation Project.

40. On page 27, between lines 6 and 7, insert the following:

(5) Nothing in this Act shall necessitate any change in the use or operation of any public utility or common carrier located within the Corrider.

(6) Actions taken under this Act to achieve the purposes described in section 2(b) shall emphasize voluntary cooperation.

Purpose

S. 746, as reported, would establish the Illinois and Michigan Canal National Heritage Corridor in the State of Illinois as well as the Illinois and Michigan Canal Heritage Corridor Commission. The Commission would serve as the catalyst behind a predominantly state and local effort to protect the historical and natural resources of the Illinois and Michigan National Heritage Corridor ("corridor") while fostering economic growth. S. 746, as reported, directs the Secretary of the Interior to provide the Commission with assistance in developing inventories of resources and developing the interpretive program for the corridor.

Background and Need

Long before it was constructed, French explorers in the 17th century saw the potential of a canal linking Lake Michigan with the Illinois River. Such a canal would establish direct transportation between the Great Lakes/St. Lawrence System and the Mississippi River System. When Illinois was admitted to the Union in 1818, one reason the northern counties were included in the boundary was to contain the potential route of the canal. Later, Abraham Lincoln, as a member of the Illinois House of Representatives, used his influence to get the canal built. As a Member of the U.S. House of Representatives, Lincoln was closely involved in the reorganization of the canal. By 1846, the canal was completed and Chicago began to develop as the center of the midwestern commerce and trade. Eventually, a larger canal was built along a parallel route. Today, the corridor includes a wide variety of historical structures, natural areas, archeological sites, and recreation resources. The corridor also contains examples of American engineering and technology from the early industrial revolution to the present.

The Illinois and Michigan Canal itself is a registered national historic landmark. Other national historic landmarks within the corridor are Chicago Portage, Starved Rock, and Old Kaskaskia Village. Many buildings and districts within the corridor are on the National Register of Historic Places, including as many as 200 structures. The corridor contains significant natural areas as well; 39 of these are listed on the Illinois Natural Areas inventory.

In 1980, Congress directed the National Park Service to conduct a study of alternatives to protect and enhance the utilization of the cultural and natural resources in the Illinois and Michigan Canal Corridor.

In October 1981, the National Park Service completed this conceptual plan for the corridor and alternative strategies for implementation. This plan identifies the many cultural, natural, and recreation resources of the corridor, sets out a series of goals for the development of the plan and presents three alternative designs for a commission to carry out the goals. The Illinois and Michigan Canal Heritage Corridor Commission in S. 746, as reported, is modeled after one of these alternatives with modifications.

The Illinois and Michigan Canal is the dominant historical element of the corridor. It is the physical feature which connects the corridor communities and gives them a sense of cultural commonality. It also links the archeological, natural and recreation resources.

Envisioned in the 17th century, the Illinois and Michigan Canal was first authorized in 1822. In 1827, Congress granted the State of Illinois title in fee to the odd-numbered sections on either side of the canal. Congress authorized sale of the federally owned, even sections in 1834. These evidently were sold without reference to a right-of-way for a canal. Finally, in 1947 Congress passed legislation mandating that the United States Army Corps of Engineers relinquish to the State all right, title, or interest in the canal right-of-way. A condition was imposed to the effect that the lands were to be used for public purposes; otherwise, they would revert to the Federal Government. There is disagreement about whether or not this condition has been met, since the State has sold or leased many portions of the canal for purposes other than recreation. There also are questions about the State's ownership of the 90-foot reserve on either side of the canal, especially in the even-numbered sections. These questions must be resolved to establish canal ownership and control. S. 746, as reported, resolves these issues.

Legislative History

S. 746 was introduced on March 9, 1983. S. 746 is similar to S. 2157 which was considered by the Public Lands and Reserved Water Subcommittee in the 97th Congress at a hearing on November 30, 1982. The Administration in testimony supported the enactment of S. 2157 with amendments. No hearings have been held in the 98th Congress. The Administration supports the enactment of S. 746 if amended.

In an open business session on November 17, 1983, the Committee on Energy and Natural Resources ordered S. 746 favorably reported with amendments.

Committee Recommendation and Tabulation of Votes

The Senate Committee on Energy and Natural Resources in an open business session on November 17, 1983, by a unanimous vote of a quorum present recommends the Senate pass S. 746 if amended as described herein.

The rollcall vote on reporting the measure was 15 yeas, 0 nays as follows:

YEAS	NAYS
Mr. McClure	
Mr. Hatfield [1]	
Mr. Weicker [1]	
Mr. Domenici [1]	
Mr. Wallop	
Mr. Warner	
Mr. Nickles	
Mr. Hecht	
Mr. Chafee	
Mr. Heinz	
Mr. Evans	
Mr. Johnston	
Mr. Ford	
Mr. Metzenbaum	
Mr. Matsunaga [1]	

[1] Indicates voted by proxy.

Committee Amendments

The Committee adopted 40 amendments to S. 746 as introduced. Tlie majority of the Committee amendments are technical or clarifying in nature. A number of the other amendments were adopted in response to the changes recommended by the Department of Justice, Department of the Interior and the Department of the Army in their Executive Communications on S. 746.

The legislative reports are printed in full in the "Executive Communications" section of this report.

The first two amendments clarify the purpose of the Act by making two deletions. The purpose of the Act as reported is to retain, enhance and interpret the resources of the corridor, where feasible, consistent with industrial and economic growth. The Committee moved the statement on emphasizing voluntary cooperation to a more suitable place in the bill.

The third amendment adds park districts to be included in the definition of "political subdivisions".

The fourth amendment in section 4(b)(1) corrects the map reference to correctly reflect the map of record in the bill.

The fifth amendment in section 4(b)(2) gives the Secretary of the Interior discretionary authority to make minor boundary revisions upon request of the Commission. The bill as introduced directed the Secretary to make such revisions upon request of the Commission.

The sixth amendment in section 6(a) corrects the manner by which members are appointed to the Commission to make the appointment

process conform to the requirements of the appointment clause of the Constitution. S. 746, as introduced, did not provide authority for the Secretary of the Interior to appoint State and local government officials nominated by the Governor.

Amendments 7 through 11 are technical renumbering amendments.

Amendment number 12 in section 6(a) provides that the Secretary of the Interior may request the submission of one or more new lists of individuals nominated by the Governor for appointment to the Commission. The Secretary retains the responsibility for the appointment of such indivduals.

Amendment number 13 is a technical renumbering amendment.

Amendment number 14 in section 6(b) changes the terms of Commission members from 2 years to 3 years and eliminates a 5-year limitation on service on the Commission.

Amendment number 15 is a technical renumbering amendment.

Amendment number 16 clarifies a provision in section 8(e) on the use of funds. The Commission may use appropriated funds to match Federal or other grants.

Amendments number 17 through 19 are technical in nature.

Amendment number 20 in section 8(g) provides that any real property acquired by the Commission may be conveyed by the Commission to land managing agencies only with the consent of those agencies.

Amendment number 21 is technical in nature.

Amendment number 22 in section 9(a) deletes the requirement that the Commission must provide funds or support fund raising activities for the preservation and renovation of structures of the canal.

Amendment number 23 in section 9(a) deletes the requirement that the Commission must provide funds or support fund raising activities for the establishment and maintenance of trails in the corridor.

Amendment 24 in section 9(a) deletes the requirement that the Commission must provide funds or support in raising funds to acquire lands for the preservation of natural areas in the corridor.

Amendment number 25 is a technical conforming amendment.

Amendment number 26 in section 9(a) deletes the requirement that the Commission must provide funds to acquire historic, architectural, engineering structures and sites in the corridor.

Amendment number 27 is technical.

Amendment number 28 deletes the requirement that the Commission must provide funds to restore historic buildings in the corridor.

Amendments number 22 through 28 delete mandatory funding provisions which the Commission may not have been able to comply if the appropriations or other funding efforts by the Commission were limited or nonexistent.

Amendment number 29 is technical in nature.

Amendment number 30 in section 9(d) defines the term "person". The term "private person" as used in S. 746 as introduced was misleading or confusing.

Amendment number 31 in section 9(d) provides that the Commission can not require any person or entity to install protective features, fences or signs in the corridor.

Amendment number 32 provides that the Commission may not develop any new trial along the canal through any pre-existing transportation corridor which is north of Joliet, Illinois.

Amendments number 33 and 34 provide the Secretary and the Commission a longer period of time to comply with inventory, publication and interpretation requirements.

Amendment number 35 in section 12 deletes the requirement that the Secretary complete certain feasibility studies for rehabilitation of historic structures over a 10-year period and also deletes the requirement that the Secretary provide tax information to interested parties on the rehabilitation of historic structures in the Corridor.

Amendment number 36 is technical.

Amendment number 37 in section 13 addresses the requirement for Federal entities conducting or supporting activities affecting the corridor to consult, coordinate and plan such activities so as to not adversely effect the resources of the corridor. The amendment limits the process to those activities which significantly directly affect the cooridor.

Amendment number 38 is technical.

Amendment number 39 conveys certain property from the United States to the State of Illinois subject to conditions as recommended by Department of the Army.

Amendment number 40 clarifies that the establishment of the corridor shall not necessitate any change or effect the operations of any public utility or common carrier in the corridor.

SECTION-BY-SECTION ANALYSIS

Section 1 provides for a short title of the bill.

Section 2(a) makes three Congressional findings citing the history and development of the corridor and the need for Federal assistance.

Section 2(b) states the purpose of the Act.

Section 3 defines the terms used in the Act.

Section 4(a) establishes the Illinois and Michigan Canal Heritage Corridor.

Section 4(b) of S. 476 establishes the boundaries of the corridor, referring to a map dated May, 1983. The corridor is defined by specific boundaries outside of the City of Chicago to the terminus at Peru. The map does not define precise boundaries within the City of Chicago, nor in the communities bordering the Calumet-Sag Channel, but simply indicates that the corridor follows both the Calumet-Sag Channel and the Sanitary & Ship Canal/Chicago River to Lake Michigan.

Section 4(b)(2) of S. 746 gives the Secretary authority to make minor boundary revisions of the corridor upon request of the Commission.

Section 5 provides for the establishment of the Commission.

Section 6(a) provides for the appointment of members to the Commission; prescribes the number of members to be appointed to the Commission; and outlines the nominating procedures and the appointing authority of the Secretary.

Section 6(b) provides for the length of terms for the members of the Commission.

Section 6(c) provides for the compensation of Commission members.

Section 6(d) provides for the election and terms of the chairperson of the Commission.

Section 6(e) provides for the constitution of a quorum of the Commission.

Section 6(f) provides for meetings of the Commission.

Section 7(a) provides for the selection and compensation of a Director and staff of the Commission.

Section 7(b) provides for the hiring of consultants and their compensation.

Section 7(c) provides for the detailing of personnel from Federal and State agencies to the Commission.

Section 8 provides authority for the Commission to hold hearings, appoint agents, obtain support services, use the mails, and use Federal funds which are appropriated as the non-Federal contribution on those grants which require a non-Federal fund match.

Section 8(g) of S. 746 as reported restricts the Commission's ability to acquire real property under the Act. The Commission is established as a facilitator and coordinator of the National Heritage Corridor concept plan. The Commission is not a land managing agency, and provision is made in this section for the Commission to convey any real property acquired to an appropriate public or private land managing agency, with the consent of such agencies.

Section 8 also provides for modification of the conceptual plan for the corridor; provides authority to enter into cooperative agreements; and establish advisory groups.

Section 9(a)(1)(A) directs the Commission to assist the State or non-profit groups in preservation and renovation of canal structures.

Section 9(a)(1)(B) of S. 746 assures that the Commission operates in its intended advisory role and that local governing bodies retain their authority. The provision is intended to insure that the Commission is not construed to have regulatory powers.

Section 9(a)(1)(C) of S. 746 refers to a study published in April 1981 by the Historic American Engineering Record. The Commission is not required to implement recommendations of the HAER study.

Section 9(a)(2)(A) of S. 746 calls for the establishment and maintenance of intermittent recreational trails in the corridor which are compatible with economic development. The I&M Canal Corridor has widely mixed land uses which fragment single linear connections. One of the goals of the concept plan and S. 746 is the establishment of a continuous bicycle and automobile trail throughout the 100-mile linear system.

Section 9(a)(3) directs the Commission to encourage adjacent property owners to retain vegetation as visual screens and barriers between such properties and recreation trails in the corridor.

Section 9(a)(4) of S. 746 refers to the Ilinois Natural Areas Inventory, which lists quality natural sites in the State which have been largely unaltered by settlement. The corridor region contains some 37 of these high-quality natural areas, ranging from 1 to over 1,700 acres in size, one of the highest concentrations in the State. Half of these sites are publicly owned.

Section 9(a)(5) directs the Commission to assist in identification and preservation of the historical, architectural and engineering structures in the corridor and the archaeology and geological resources and sites in the corridor.

Section 9(a)(6) directs the Commission to assist the State and others in the restoration of any historic building in the corridor by providing technical assistance.

Section 9(a)(7) of S. 746 provides for the Commission to utilize the resources of local agencies, organizations and individuals in the provision of public interpretative programs in the corridor, including interpretive brochures, maps and guides. Several cultural and educational institutions have expressed interest in the public interpretation of the corridor, notably the Center for American Archaeology at Northwestern University. Many local institutions have undertaken or are undertaking research projects which would have provided or will provide valuable material for public interpretation.

Section 9(a)(8) is self explanatory.

Section 9(b) is self explanatory.

Section 9(c) directs the Commission to identify access routes to the canal and related sites and to direct corridor traffic away from industrial access, routes and sites.

Section 9(d) authorizes the Commission to finance installation of fences, signs or protective features if these devices are installed by the State, political subdivisions of the State or persons and the Commission, any affected governmental body, and owners of the property on which the installation occurs and any adjacent property user approves. The Commission does not have authority to require such installation.

Section 9(e) of S. 746 directs the Commission to encourage the State to limit excessive liability, for visitors and users of the corridor, since liability is a State and not a Federal issue. The State of Illinois has indicated its willingness to address this concern which exists in other recreational areas as well.

Section 9(f) directs the Commission to prepare an Economic Impact Assessment before any major action is undertaken by the Commission including the expenditure of funds.

Section 9(g) directs the Commission to prepare and submit an annual report to the Governor of Illinois and the Secretary of the Interior.

Section 10(a) of S. 746 restricts the Commission's development of certain areas. In keeping with the provisions of section 9(a)(1)(B), the Commission shall not infringe on the authority of the State or any political subdivision of the State. This paragraph insures that the management of the existing State parks in the corridor, including the Illinois and Michigan Canal State Trail, remains with the State. The specific sites listed under this section refer to the State's agenda of improvements, and safeguards industrial sites which have been privately owned and managed for up to 70 years.

Section 10(b) is self explanatory.

Section 11 provides for termination of the Commission 10 years after the date of enactment. The Commission may extend the life of the Commission for a period of not more than 5 years if certain prior conditions are met.

Section 12(1) of S. 746 directs the Secretary to conduct an inventory of sites and structures in the corridor. The Historic American Engineering Record and the Historic American Building Survey are appropriate mechanisms for an architectural historical inventory, and

local educational and cultural institutions should be utilized in the production of these inventories. It is an essential focus of the concept plan for the corridor that local resources and expertise by utilized in the implementation of the Act.

Section 12(2) of S. 746 directs the Secretary to develop an interpretative scheme for the corridor in consultation with local experts and institutions.

Section 12(3) directs the Secretary of the Interior to detail two DOI employees to the Commission each fiscal year for the duration of the Commission.

Section 13 directs any Federal agency conducting or supporting significant activities directly affecting the corridor to consult and cooperate with the Commission and the Secretary of the Interior and to the maximum extent practicable, conduct or support such activities in a manner in which the Commission determines will not have an adverse effect on the resources cited in the National Park Service report.

Section 14 conveys title to certain property in the corridor from the United States to the State of Illinois subject to certain conditions and provisions.

Section 15 of S. 746 reaffirms the nonregulatory nature of the legislation, recognizing the highly industrialized nature of the corridor and its historic and continuing role as a transportation corridor for the Nation. No environmental, occupational, safety or other standards or laws are negated by this legislation, nor does it create any additional regulations.

Section 16 authorizes appropriations to the Commission and the Secretary of the Interior.

Cost and Budgetary Consideration

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., November 18, 1983.

Hon. James A. McClure,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 746, the Illinois and Michigan Canal National Heritage Corridor Act of 1983.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Rudolph G. Penner, *Director.*

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

November 18, 1983.

1. Bill number: S. 746.
2. Bill title: The Illinois and Michigan Canal National Heritage Corridor Act of 1983.

3. Bill status: As ordered reported by the Senate Committee on Energy and Natural Resources, November 17, 1983.

4. Bill purpose: The bill establishes the Illinois and Michigan Canal National Heritage Corridor and creates a 19-member commission to promote and enhance the Corridor. The Commission members must meet quarterly and will receive compensation for expenses incurred while on Commission business. The Commission is to expire in 10 years with a possible five-year extension. The bill authorizes the appropriation of $250,000 per year for the Commission, and such sums as may be necessary for the Department of the Interior.

5. Estimated cost to the Federal Government.

	Millions
Estimated authorization level:	
Fiscal year:	
1984	$1.0
1985	.3
1986	.3
1987	.3
1988	.3
Estimated outlays:	
Fiscal year:	
1984	.5
1985	.7
1986	.4
1987	.3
1988	.3

The costs of this bill fall within budget function 300.

Basis of estimate.—The authorization level for the Commission is that stated in the bill. Based on information from the National Park Service, we estimate that the Department of the Interior will require approximately $700,000 for one-time expenditures and approximately $60,000 annually for activities required by this bill. For purposes of this estimate, it is assumed that S. 746 will be enacted early in 1984 and that the amounts authorized will be appropriated, beginning in fiscal year 1984.

6. Estimated cost to State and local governments: None.

7. Estimated comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Mary Ann Curtin.

10. Estimate approved by:

C. G. Nuckols,
For James L. Blum,
Assistant Director for Budget Analysis.

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 746 as reported. S. 746 would establish the Illinois and Michigan Canal National Heritage Corridor and Commission. The bill is not a regulatory measure in the sense of imposing Government established standards or significant economic responsibilities on private individuals and businesses. However, the Commission, mostly through volunteer means, may enter into cooperative agreements with State and local

governments, landowners, and regulatory agencies which may result in some regulatory impact.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 746 as reported.

Executive Communications

The pertinent legislative reports received by the Committee from the Department of the Interior, Department of Justice, and the Department of the Army setting forth Executive Agency recommendations relating to S. 746 are set forth below:

U.S. Department of the Interior,
Office of the Secretary,
Washington, D.C., July 7, 1983.

Hon. James A. McClure,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: This responds to your request for our views on S. 746, a bill "To establish the Illinois and Michigan Canal National Heritage Corridor in the State of Illinois, and for other purposes."

We recommend that S. 746 be enacted, if amended as suggested herein.

Section 2 of S. 746 states that it is the purpose of this legislation "to retain, enhance, and interpret, for the benefit and inspiration of present and future generations, the cultural, historical, natural, recreational, and economic resources of the corridor, where feasible, consistent with a policy of industrial and economic growth." Section 4 of S. 746 would establish the Illinois and Michigan Canal National Heritage Corridor. The Corridor would be administered by a commission established by section 5 of the bill. The Commission would consist of the Director of the National Park Service or his designee and 18 officials from the State of Illinois, either involved in the State government or nominated by the Governor and appointed by the Secretary of the Interior. The chair of the Commission would be elected by its members. Members would serve for terms of two years and would receive no pay, but, while away from their homes or regular places of business, would be allowed travel expenses, including per diem.

The Commission itself would have a Director and such additional staff personnel as the Commission deems desirable. Salaries of the staff would be paid pursuant to the authorization in section 16(a)(1)(A) of the bill. The Commission's main responsibility would be the implementation and support of the Park Service report on the Corridor of November 1981. Section 9 of S. 746 sets forth the duties of the Commission in detail, many of which involve fundraising, inventories of the resources along the Corridor, development of interpretive materials, and technical assistance to private landowners along the Corridor. Certain restrictions on the authority of the Commission are listed in section 10 of the bill. The Commission would be required to prepare an economic impact assessment before making any funds available to any entity for the acquisition of any real property and be-

fore undertaking any major action respecting capital improvement. The Commission would also be required to prepare annual report on its activities and submit it to the Governor and the Secretary.

The Commission would have the authority to infringe upon any authority or policies of any State or local government, with respect to management of canal property and establishment and maintenance of intermittent recreational trails, public land managing agency, or to establish or modify any authority of any governmental agency with respect to acquisition of land.

The Secretary of the Interior would be required to provide technical assistance to the Commission in numerous areas listed in section 12 of the bill. That assistance would be required throughout fiscal year 1993 and would include the providing of two staff positions to the Illinois and Michigan Canal Heritage Corridor Commission through 1993.

Any Federal entity conducting or supporting activities directly affecting the Corridor would be required to consult with, cooperate with, and, to the maximum extent practicable, coordinate its activities with the Secretary and the Commission and to conduct or support such activities in a manner that the Commission determines will not have an adverse effect on the resources cited in the National Park Service report. Under the Act, the United States would also release to the State of Illinois all remaining rights it holds to the title of property associated with the Illinois and Michigan Canal except as to the prism and towpath.

Finally, the legislation specifically states that the designation of the Corridor should not impose any change in current environmental quality standards. The Act would also not impose any environmental, occupational, safety, or other regulations, standards, or permit processes which are different from those now applicable, or which would be applicable had the Corridor not been established.

We support this effort to preserve the historic and natural resources of the Illinois and Michigan Canal mainly through private initiative and without any Federal management of the area. We do, however, have some problems with the legislation as drafted.

First, we recommend that the membership of the Commission be changed. The U.S. Supreme Court has held in *Buckley* v. *Valeo*, 424 U.S. 1 (1976) that, where a Commission is exercising "significant authority pursuant to the laws of the United States" and its activities would constitute "the performance of a significant governmental duty exercised pursuant to a public law," the members of the Commission must be appointed in the manner prescribed by Article II, section 2, cl. 2 of the Constitution, i.e., by the President by and with the advice and consent of the Senate, or, if authorized by the Congress, by the President alone, the courts, or the heads of departments. We therefore recommend that section 6 be amended to provide that the Secretary of the Interior appoint all the members of the Commission from among the groups listed in section 6, taking into consideration the recommendations of the Governor of Illinois. The Department of Justice will communicate further with your Committee on this matter.

We also cannot support the inclusion of section 12 in the bill. The duties that would be ascribed to the Secretary under that section are either more appropriately ones that should be given to the Commission or ones that should be borne by the private sector. As we stated

in our testimony on S. 2157, a similar bill introduced in the 96th Congress, under our existing authority, we will provide the Commission with assistance for two years in developing the interpretive program for the Corridor. Paragraph (5) of section 12 requires the Secretary to provide to the Commission two staff positions. We have no objection to this requirement, but believe it is more appropriately placed in section 7.

We also believe that the language in section 9 of the bill, detailing the duties of the Commission, should be simplified. Subsections (b) and (c) should be deleted and subsection (a) should be amended to read as follows: "(a) The Commission shall implement and support the goals of the conceptual plan. In addition to those goals, the Commission shall implement and support the goal of enhanced economic development in the corridor.".

The legislation does not directly address the issue of whether acquisition by the Secretary is authorized in the area. We strongly oppose any such acquisition in this area. Section 8(g)(3) would give the Commission authority to convey real property or interests in real property acquired by the Commission to appropriate public or private land managing agencies. We believe that paragraph (3) should be amended by including the phrase "with the consent of such agency," after the comma on page 12, line 13. We do not believe that the Federal Government should be put in the position of having to manage lands that we have determined are not appropriate for Federal management.

In addition, we recommend that section 13 be deleted from the bill. We see no reason for imposing this broad a duty on all Federal entities conducting or supporting activities that directly affect the Corridor.

We refer to the Department of the Army on the requirement in section 14 of the bill that title to the Canal be released to the State of Illinois. The Department of the Army is reviewing the provision to assess its impact on certain Corps of Engineers projects in the area and will send a report to the Committee shortly.

Finally, we recommend that subsection (a)(1)(A) of section 16 be amended by striking out $250,000 and inserting in lieu thereof $150,000.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

JAMES WATT, *Secretary.*

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., August 2, 1983.

Hon. JAMES MCCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This letter presents the views of the Department of Justice on § 6 of S. 746, a bill "to establish the Illinois and Michigan Canal National Heritage Corridor in the State of Illinois,

and for other purposes." The Department of Justice opposes enactment of this provision, unless amended in accordance with this report.

Section 6 of S. 746, as presently drafted conflicts with the Appointments Clause of the Constitution.

Section 4 of the bill establishes the Illinois and Michigan Canal National Heritage Corridor ("Corridor") and provides that the Corridor shall be administered by the Commission in accordance with the provisions of the Act. Section 5 provides that the Commission shall carry out the duties specified in section 9 of the Act. Section 16 provides for the funding of the Commission by the United States.

According to section 6(a) of the bill, the Commission would consist of the Director of the National Park Service, ex officio, three officials of the State of Illinois, ex officio, and 15 individuals nominated by the Governor of the State of Illinois and appointed by the Secretary of the Interior (the "Secretary"). The Governor must nominate individuals from four separate categories: a member of a forest preserve district, a member of a county board of each applicable county, individuals who represent interests of history, archaeology, historic preservation, recreation and conservation, and individuals who represent the interests of business and industry.

As stated, the Commission will "administer" the Corridor in accordance with the provisions of the Act, § 4(a)(c), and implement and support the goals of the plan embodied in a report submitted by the National Park Service. § 9(a). Further, while some of the Commission's specific activities can be characterized as hortatory, others involve financial assistance, or fund raising in support of state or local governments or other organizations, for renovation or preservation purposes. § 9(a)(1)(A).

More specifically, the Commission shall assist the state or local government in establishing and maintaining intermittent recreation trails compatible with economic development by providing technical assistance, funding or support in raising funds. § 9(a)(2)(A). The Commission will also assist in the enhancement and preservation of the National Areas Inventory of the State of Illinois by providing funds and support in raising funds to enable the state or local government to acquire such land. § 9(a)(4). In assisting in the enhancement of public awareness of historical, architectural and engineering structures in the Corridor, the Commission may also provide funds and support in raising funds for the state or local government to acquire land. § 9(a)(5). The Commission may also finance the installation of signs, fences, warning signs or other protective features in the Corridor. § 9(d). The Commission must also take action to ensure that access roads in the Corridor are clearly indentifiable and that traffic is routed away from industrial routes. § 9(c).

It is fundamental that officers who perform Executive duties must be appointed pursuant to the Appointments Clause of the Constitution. *See* Art. II, section 2, cl. 2; *Buckley* v. *Valeo*, 424 U.S. 1 (1976). Those officials who are vested with authority that amounts to "the performance of a significant governmental duty exercised pursuant to a public law," *Buckley* v. *Valeo*, *supra*, at 141, are officers who must be appointed in a manner constistent with that clause. In particular, such individuals must be appointed by the President, by and with the

advice and consent of the Senate, or if authorized by Congress, by the President alone, the courts or the heads of departments. *Buckley* v. *Valeo*, *supra*, at 124–41.

In administering the Corridor and carrying out the functions under section 9 of the Act, especially the determinations involving the eligibility for federal funds, we believe the Commission would exercise "significant authority pursuant to the laws of the United States" and its activities would constitute "the performance of a significant governmental duty exercised pursuant to a public law." *Buckley* v. *Valeo*, *supra*, at 126, 140–41 (1976).

The members of the Commission therefore must be appointed in the manner prescribed by Article II, § 2, cl. 2 of the Constitution, *i.e.*, by the President by and with the advice and consent of the Senate, or if authorized by Congress, by the President alone, the courts or the heads of the departments. *Buckley* v. *Valeo supra*, at 124–41. However, the members of the Commission include individuals who would not be appointed in a manner consistent with the Appointments Clause of the Constitution. Specifically, the Director of the Illinois Department of Conservation, the Director of the Illinois Department of Commerce and Community Affairs, and the president of the board of the Metropolitan Sanitary District of Greater Chicago, are not appointed in a manner authorized by the Appointments Clause.

Furthermore, with respect to those individuals who are to be appointed by the Secretary upon nomination of the Governor, we believe that the language of § 6 should make clear that the Secretary retains the responsibility for the appointments of those persons, and that the Secretary is under no obligation to appoint the persons who are on the lists submitted to him by the Governor. Accordingly, the Secretary may request the submission of one or more new lists if a list is not satisfactory to him.

In conclusion, the Department of Justice opposes enactment of Section 6 of S. 746 unless amended consistent with this report.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

C. MARSHALL CAIN,
For Robert A. McConnell,
Assistant Attorney General.

DEPARTMENT OF THE ARMY,
Washington, D.C., June 22, 1983.

HON. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army on S. 746, 98th Congress, a bill "To establish the Illinois and Michigan Canal National Heritage Corridor in the State of Illinois, and for other purposes."

The general purpose of the bill is stated in the title. Specifically, the bill provides a short title (Section 1), findings and a purpose (Section 2) and definitions (Section 3). Section 4 provides for the establishment

of the Corridor and describes how it will be identified. Section 5 provides for the establishment of a Corridor Commission. Section 6 provides for the organization of the Commission through subsections dealing with membership, terms, compensation, chairperson, quorum, and meetings. The staff, powers, duties, and limitations on powers are provided in Sections 7, 8, 9, and 10 of the bill, respectively. Section 11 provides for the termination of the Commission. Section 12 specifies duties of the Secretary of the Interior under the bill and Section 13 specifies duties of other Federal entities.

Section 14(a) directs the Secretary of the Interior to release to the State of Illinois any right, title, or interest of the United States in real property associated with the canal. Section 14(b) authorizes the Secretary to release any right, title, and interest of the United States in the canal prism and towpath only if the real property is used and occupied for park, recreational, of other public purposes. Subsection (b) further provides that if the real property is not so used and occupied, it shall revest in the United States.

Section 15(a) describes the effect of the bill on environmental and other regulatory standards, and Section 15(b) specifies restrictions on the Commission and the Secretary of the Interior. Section 16(a) provides authorization of appropriations to carry out the act, and Section 16(b) provides an allocation for certain purposes.

The Department of the Army defers to the Department of the Interior on the merits of the bill provided the bill is amended to reflect the following comments.

The Federal government currently owns the canal itself and a 90-foot strip of land on either side. Section 14(a) of the bill directs the Secretary of the Interior to release to the State "any right, title, or interest of the United States in real property associated with the Canal." In describing the Corridor, Section 4(b) of the bill refers to a map which has not been made available to the Department of the Army. It is therefore difficult to ascertain precisely what lands are enclosed in the proposed corridor or, more significantly, what is to be conveyed to the State. For this reason, we do not have precise information as to the extent and fair market value of the lands proposed for conveyance.

We know, however, that there are certain lands for which the Corps of Engineers will need to retain its interests in order to operate and maintain the Illinois Waterway Navigation Project. When the Illinois and Michigan Canal Project was abandoned, some of the lands were incorporated into the Illinois Waterway Navigation Project, an active Federal project which extends from the confluence of the Illinois River and Mississippi River at Grafton, Illinois, to Chicago. We have included a summary may and a complete set of maps of the canal lands, on which the lands needed by the Corps for this project have been delineated. The lands are described as follows:

	Township	Range	Section
Sheet:			
2	37N	11E	14.
3	35N	10E	9 and 16.
4	35N	10E	16, 20 and 21.
5	34N	9E	31.
5	34N	8E	22, 23, 25, 26 and 36.

The proposed conveyance to the State is a matter for some concern, since it is the Commission that will have to operate the Corridor. In the past when the State was authorized to take lands for highway, historic, recreational and public purposes, the State attempted to sell the lands for other purposes. Because of this, we recommend transfer of the lands to the Corridor Commission, the public entity with primary responsibility with respect to the Corridor, rather than to the State. This may require adding a new paragraph to section 8(g) of the bill.

The actual language of the conveyance is also a matter of some concern. If it is decided to convey to the State of Illinois, we recommend that Section 14 be amended to read as follows:

"(a) The Secretary shall convey to the State of Illinois by quitclaim deed all right, title and interest of the United States to the property associated with the Illinois and Michigan Canal, except those interests which are, in the discretion of the Secretary of the Army, necessary in connection with authorized U.S. Army Corps of Engineers projects.

"(b) The conveyance by the United States shall be subject to the condition that the State of Illinois, its successors, and assigns agree to hold the United States harmless from all claims arising from or through the operations of the lands conveyed by the United States.

"(c) The remaining interests in the canal prism and towpath will be released only at the discretion of the Secretary with the consent of the Secretary of the Army.

"(d) In the event that the real property conveyed under this Act is not used for park, recreational, or other public purposes, the United States shall have the right to resume possession of all or any portion of such property and the immediate right of re-entry thereon."

The reasons for the recommended amendments to Section 14 are as follows. The language "shall convey . . . by quitclaim deed all right, title and interest . . ." in proposed Section 14(a) is for clarity. The word "release" generally refers to easement interests, and since it is proposed to convey fee interest, the substitute language is preferable.

Proposed Section 14(b) is considered to be of great importance, if any lands are to be transferred to the State of Illinois, or to any entity substantially controlled by the State of Illinois. The transfer should be subject to a legislative requirement that the State agrees to hold the Federal government harmless from all liabilities associated with the canal lands.

In proposed Section 14(c), additional language was added requiring the consent of the Secretary of the Army before the Secretary of the Interior can convey the remaining lands. Since the retained lands are required to operate an active navigation project, any conveyance should be contingent upon a determination by the Secretary of the Army that the lands are no longer necessary.

In proposed Section 14(d), we have provided substitute language relating to future interests of the United States in the real property if it is not used for park, recreational, or other public purposes. If the real property is not used for the specified purposes, the substitute language creates a right of re-entry in the United States. Since reverters in previous conveyances led to the present unclear title status, we believe that right of re-entry language is preferable.

We are also concerned with two other provisions of the bill.

The membership of the proposed commission, as proposed by Section 6(a), would include only 1 Federal member among a total membership of 19. This limited Federal representation does not appear to be adequate to properly present, let alone represent, the Federal concerns likely to arise in the management of the Corridor. The Federal membership should be increased, and, inasmuch as the Corps of Engineers is responsible for operating and maintaining the Illinois Waterway Navigation Project, the addition of a Corps representative would appear to be logical. Also, the 2-year terms for the Commission members do not appear to be long enough to assure proper continuity.

While the Corps is willing to consult and cooperate with the Commission, as provided in Section 13, we are concerned that the requirements of Section 13 may interfere with the legitimate priority of the Corps' operation of its present navigation facilities. Accordingly, the legislation should be amended to recognize the priority of navigation (and other ongoing activities). Further, Section 13 is construed to in no way limit the activities of the Department of Defense either outside or inside the boundaries of the Illinois and Michigan Canal National Heritage Corridor, including overflights of the Corridor by military aircraft.

Subject to amendment of the bill consistent with the foregoing comments, the Department of the Army defers to the views of the Department of the Interior.

Enactment of the bill will cause no apparent increase in the budgetary requirements of the Department of Defense.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Congress.

Sincerely,

WILLIAM R. GIANELLI,
Assistant Secretary of the Army
(Civil Works).

Enclosure.

AUGUST 1, 1983.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: On June 22, 1983 I provided Department of the Army views on a bill which your Committee has under consideration to establish the Illinois and Michigan Canal National Heritage Corridor, S. 746. The enclosed letter to Illinois' Governor Thompson provides clarification on two points which were discussed with his representatives.

We understand that your Committee may be marking up this bill soon and thought you should have a copy of this letter. Please let me know if you have any questions on our position.

Sincerely,

WILLIAM R. GIANELLI,
Assistant Secretary of the Army
(Civil Works).

Enclosure.

DEPARTMENT OF THE ARMY,
OFFICE OF THE ASSISTANT SECRETARY,
Washington, D.C., August 2, 1983.

Hon. JAMES R. THOMPSON,
Governor of Illinois,
Springfield, Ill.

DEAR GOVERNOR THOMPSON: This is in response to your letter of July 15, 1983, concerning the views we provided to Senator McClure on the Illinois-Michigan Canal legislation (S. 746). It also reflects the discussion at a meeting of the two individuals mentioned in your letter with William J. Cronin of the Corps of Engineers and Donald Dillon of my staff.

Our primary concern is, as you indicate it should be, the requirement for operation and maintenance of the Illinois Waterway navigation project by the Corps of Engineers. Since the original Canal lands overlap lands needed for operation and maintenance of the waterway, we provided Senator McClure with maps showing the approximate Canal lands which are needed by the Corps. We believe that subsequent to enactment of the enabling legislation, the appropriate Corps field office could quickly identify in detail the extent of those lands and the interests needed for operation and maintenance of the Waterway. As was discussed with your representatives, the actual areas would be somewhat less than the gross lands identified on the maps provided to Senator McClure. In this regard, we find acceptable an amendment to S. 746 suggested by Mr. Fulton which would require that within the parcels described in my previous letter to Senator McClure, the remaining Federal interest in the Canal prism and towpath lands (including reserved lands) necessary for the operation and maintenance of the Waterway would be conveyed to the State only with the concurrence of the Secretary of the Army and with such conditions as necessary to protect the navigation project. Additional information on these requirements can be obtained from Colonel Bernard P. Slofer, District Engineer, Rock Island District, Rock Island, Illinois.

The other point mentioned in the staff discussion was our suggestion to Senator McClure that the bill should contain a hold and save harmless clause. Our sole concern on this matter was that the Federal Government be protected against future claims related to existing or prior conditions or circumstances connected with property rights conveyed to the State pursuant to the legislation.

The issues discussed above represent our greatest concerns while the other points raised in my letter to Senator McClure are of secondary importance to us. A copy of this letter will be provided to Senator McClure as clarification of my previous correspondence.

Sincerely,

WILLIAM R. GIANELLI,
Assistant Secretary of the Army
(Civil Works).

CHANGES IN EXISTING LAW

In copliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the bill S. 746 as reported.

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